BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 93-176-C - ORDER NO. 93-948

OCTOBER 15, 1993

IN RE:	Tariff filing by Southern Bell Telephone to Introduce Area Plus Service.	)ORDER DENYING PETITIONS)FOR RECONSIDERATION AND)GRANTING REQUEST FOR)CLARIFICATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on Petitions for Rehearing and/or Reconsideration filed by LDDS of Carolina, Incorporated (LDDS), MCI Telecommunications Corporation (MCI), AT&T Communications of the Southern States, Incorporated (AT&T), and the Consumer Advocate for the State of South Carolina (the Consumer Advocate). For the reasons stated below, all petitions for Rehearing and Reconsideration must be denied. The Commission Staff has presented a Request for Clarification, which we shall grant as explained below.

All Petitions for Reconsideration complain that the Commission has failed to include findings of fact and conclusions of law separately stated as required by S.C. Code Ann. §1-23-350 (1976 as amended). The Commission believes that this allegation is erroneous upon examination of Order No. 93-808. Order No. 93-808 in this Docket delineates specifically the testimony of Joseph A. Stanley, Jr. and Staff witness Gary Walsh. The Commission then goes on to adopt the Area Plus Plan based on the testimony of Stanley and Walsh, and the endorsement of the South Carolina

Telephone Coalition. The conclusions reached by the Commission are clearly tied to this testimony. The case of Seabrook Island Property Owners Association v. South Carolina Public Service Commission, ___ S.C. ___, 401 S.E.2d 672 (1991) is pertinent authority in this case. The Seabrook Island case held that no particular format for setting forth findings or conclusions is required nor is it necessary that findings of facts and conclusions of law be stated or enumerated under separate headings. 401 S.E.2d at 674. As stated in the Seabrook case, in Order No. 93-808, there is a clear connection between points listed in testimony and the conclusions subsequently reached by the Commission, i.e. a fixed correlation between the findings and conclusions. In the Seabrook case, the Court held that the Commission's Order did include findings of fact and appropriate conclusions of law to support its decision, despite the fact that findings of fact and conclusions of law were not separately stated. Therefore, we believe that Order No. 93-808 was in full compliance with S.C. Code Ann. §1-23-350 (1976, as amended). However, to remove all doubt in the minds of the parties in this case, the Commission will proceed below to list findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Area Plus Plan (APP) filed by Southern Bell Telephone and Telegraph Company (Southern Bell) is an optional 40-mile 7-digit local calling plan. Residential and business customers subscribing to Area Plus will be able to make 7-digit calls to an area extending to 40 miles from their exchange at a rate of 11¢ per minute, except during the period from 8 P.M. to 8 A.M. and all day

Saturdays, Sundays, and Holidays, during which time the rates will be discounted by 50%.

2. The remaining details of the plan are as outlined in Order No. 93-808 at 3 and 4, and are hereby adopted as Findings of Fact. There were eight pending requests for Extended Area Service (EAS) at the time of the hearing before the Commission. The mileage range on those requests was between 11 and 32 miles. Tr., Vol. 1, Stanley at 28,40.

3. Since 1987, there have been 40 EAS proposals submitted to the Commission, all of which have been within the 40 mile calling scope of Area Plus Service. Tr., Vol. 2, Walsh, at 112, 120.

4. Bills have been introduced before the South Carolina Legislature requesting expanded local calling areas similar to that presented in the Area Plus Plan. Further, numerous customer contacts with Southern Bell employees throughout the state have shown the desirability of a 40-mile expanded calling area. Tr., Vol. 1, Stanley, at 28-29.

5. Area Plus Service is a purely optional plan, which will be available to both residential and business customers statewide. Tr., Vol. 1, Stanley, at 29-32.

6. The Area Plus Calling Plan meets the extended calling area needs of Southern Bell customers in the State of South Carolina, and is therefore in the public interest, since it satisfies all pending requests for Extended Area Service, within the State, and the demand for extended calling areas, as shown from bills filed before the South Carolina Legislature and customer discussions with Southern Bell.

7. Although the average price of the plan at 11¢ per minute is lower than the access charges that Southern Bell charges the interexchange carriers (IXC's) such as the petitioners herein, intraLATA competition is not eliminated, due to the fact that the Area Plus Service is purely an optional plan. Further, the IXC's still have full ability to compete for their share of the market through appropriate marketing. Parenthetically, the Commission would note, for example, that if an automobile manufacturer makes an automobile that is cheaper than all other automobiles on the market, the public still purchases the more expensive automobiles, since those manufacturers still market their cars to the public. Likewise, we believe that intraLATA competition will still exist, even if the Area Plus Plan is less costly to the public than identical service provided by the IXC's. Also, the Area Plus Plan is not mandatory for all Southern Bell subscribers. The market is still open for competition.

8. Classroom Communications Service is intended as a communications link to be placed in classrooms to enhance the education process by allowing teachers to conduct classes at multiple locations, and to access various data bases. The plan has been filed and no Protests or Interventions were received. Monthly rate and applicable usage charges for proposed Area Plus residential calling will be applicable to the Classroom Communications Service.

9. The Commission believes, based on the evidence in the record, that the adoption of both the Area Plus and the Classroom Communications Service is in the public interest, based on the

findings as stated above.

Having removed all doubt as to the statutory requirement for findings of fact and conclusions of law, the Commission will now proceed to consider various individual issues raised by the individual Petitions for Rehearing and/or Reconsideration.

LDDS of Carolina, Inc. alleges in its Petition for Rehearing or Reconsideration that the Commission failed to rule on a number of proposed findings of fact submitted by LDDS in its post hearing brief. Among other proposed facts that LDDS discusses are that Southern Bell allegedly failed to present any cost studies or other studies or evidence demonstrating the financial impact of Area Plus Service, that Area Plus Service will not address the "excessive" access charges which are the "root cause" of EAS pressure, that Area Plus Service would benefit business customers disproportionately to residential customers, that an alternate EAS plan should have been adopted, and other proposed factual findings.

First, it should be noted that, as stated above, that the testimony of Joseph A. Stanley, Jr. and Gary Walsh showed that there were eight pending EAS requests at the time of the hearing, all of which were within the 40 mile radius of the expanded area of Area Plus Service, and that, since 1987, there have been some forty requests which were within the 40-mile radius. The Commission holds that these factors support the introduction of this clearly optional plan. Further, the Commission holds that the purpose of the present case was not to address access charges, but simply to address an optional extended calling plan that the Commission believes will be of real benefit to the consumer in a number of

areas.

There is evidence that would tend to indicate that business customers would benefit from the plan in addition to residential customers. The testimony of Gary Walsh shows that although EAS requests are generally driven by residential groups, several EAS plans have been filed by Chambers of Commerce in the past. Tr., Vol. 2, Walsh at 112. Further, as stated above, the Commission holds that since Area Plus is an optional service, the fact that usage rates may be priced lower than current intrastate access charges does not eliminate intraLATA competition. If the Area Plus Plan was a mandatory plan, the Commission could well reach a different conclusion. In addition, the Commission holds that, regarding any alternative proposals mentioned by LDDS or any other Company, the only plan officially before the Commission and noticed to the public was the Area Plus Plan as filed. The Commission believes that any alternate plan would have had to have been noticed prior to the Commission having the ability to adopt such a plan. Therefore, the Commission could not adopt an alternate plan in the case at bar. LDDS' Petition must be denied.

MCI Telecommunications, Corporation also petitioned for Rehearing and Reconsideration in this docket. A number of allegations in MCI's Petition are identical to those mentioned by LDDS, and will not be repeated herein. However, MCI alleges that the uncontroverted evidence of record is that Southern Bell will lose a minimum of $11.5 million under this plan, this revenue loss coming from what is now intraLATA toll revenue. MCI alleges that this is the same toll revenue which Southern Bell traditionally

maintains subsidizes local rates. Although the Commission is concerned about potential revenue loss in this docket and the potential effect on local rates, the Commission believes that, weighed against the potential advantage that this optional Area Plus Service gives to Southern Bell consumers in the State of South Carolina, the interest of the consuming public must prevail over any potential revenue loss to Southern Bell at this time. Should local rates be affected by Area Plus, the Commission may reopen the case for a further examination of Southern Bell's revenues and expenses with regard to the plan.

MCI also discusses the proposition that although the evidence of record seems to indicate that the residential customer causes EAS pressures, that of the $11.5 million lost by Southern Bell under this plan, $400,000 will be lost to bring Area Plus to residential customers and some $11.1 million will be lost in business customer revenue. Although it is true that residential customers tend to drive EAS pressures, there is no question that business customers contribute as well. (See prior discussion of LDDS Petition.) The Commission believes that the provision of the potential service in this case outweighs, at this time, any potential losses to the Company. Once again, the Commission intends to examine this matter on an ongoing basis and may reopen the matter should losses affect the price of local calling. MCI states in its Petition that "the facts and evidence in this case vigorously support rejection of the Area Plus tariff..." Clearly, MCI and the other Intervenors have a difference of opinion as to the value of Area Plus Service from Southern Bell, the Commission

Staff, and this Commission. Although we believe that there is certainly room for a difference of opinion in the present case, on balance, we believe that the EAS pressures as cited by company witness Stanley and Staff witness Walsh support our adoption of the Area Plus Plan. MCI's Petition must be denied.

AT&T has also filed a Petition for Reconsideration, alleging first that Southern Bell has failed to justify the reasonableness of its proposed rates, as required by S.C. Code Ann §58-9-250 (1976, as amended). The first portion of the Code provision as cited by AT&T would state that "No telephone utility shall, as to rates or services, ... grant any unreasonable preference or advantage to any person or corporation or subject any person or corporation to any unreasonable prejudice or disadvantage." AT&T fails to quote the last portion of the statute, which we believe answers AT&T's question. This is as follows: "Subject to the approval of the Commission, however, telephone utilities may establish classification of rates and services and such classifications may take into account the conditions and circumstances surrounding the service, such as the time when used, the purpose for which used, the demand upon plant facilities, the value of service rendered or any other reasonable consideration. The Commission may determine any question arising under this section." (Emphasis added) Clearly, the Area Plus Plan falls under the second portion of the Statute which allows the Commission to approve a new service taking into consideration the purpose for which the service is used. The Statute gives the Commission specific authority to determine any question arising under this

section. The Commission therefore holds that no unreasonable preference or difference in rate or service arises upon consideration of the Area Plus Plan, taking into account the factors mentioned above.

AT&T also alleges that since, Area Plus is priced lower than access charges, that competition is essentially eliminated through the use of the Area Plus Plan. Again, the Commission points out that the Area Plus Plan is strictly optional. The plan is not mandatory for Southern Bell subscribers. Therefore, no preference or advantage arises under §58-9-250 of the Code. Also, as noted supra, competition is not eliminated.

AT&T further states its belief that the Area Plus Plan promulgated by the Commission violates the provisions of S.C. Code Ann. §58-9-570 (1976, as amended), which requires the Commission to give due consideration to reasonable operating expenses and other costs necessary to provide the service. The Commission would note that this particular statute applies to situations where a "change in telephone rate" is presented to the Commission. See S.C. Code Ann. §58-9-510 (1976, as amended). The Commission would note that no change in rate resulted from the present case, since the Area Plus Plan is a new optional service. In any event, the Commission would point out that the Commission did hear evidence and consider evidence of cost in this matter, in that the Company presented testimony through witness Stanley which stated that the plan would lose $11.5 million a year. Again, the Commission believes that this consideration satisfies the criteria of §58-9-570. In any event, the Commission would note that again the Commission plans to

monitor this matter and should the price of local service be threatened by the potential losses incurred, the Commission may take action to remedy any such resultant situation. AT&T's Petition must be denied.

Finally, the Commission notes that the Consumer Advocate also filed a Petition for Rehearing and Reconsideration. Several of the matters as stated in the Consumer Advocate's Petition have been addressed above, including the determination of the effect of the Area Plus Plan on intraLATA competition, and the potential for cross-subsidization by Southern Bell. The Consumer Advocate also alleges that the Commission failed to make a decision on the question of maximizing consumer choice by leaving existing measured service plans in operation. The Commission would note that the Commission Staff has requested clarification of the Commission's holding on the existing measured service plans. Pursuant to this request, the Commission hereby holds that existing subscribers to connection calling plans, optional measured service, and premium optional calling service offerings will retain these services only at their present locations. All subscribers to tailored local calling and residence subscribers to the premium optional calling service in Belton, South Carolina will be required to select one of Southern Bell's other offerings. Hopefully, this will provide some reasonable consumer choices in conjunction with the establishment of the Area Plus Plan. In any event, in all other respects, the Consumer Advocate's Petition must also be denied.

We therefore hold that the Petitions for Rehearing and/or Reconsideration must be rejected, and therefore denied, pursuant to

the reasoning stated above, and that the Request for Clarification by Staff be granted as stated above. The Commission believes that the Area Plus Plan will serve to relieve EAS pressures which were shown in the evidence at the hearing. The Commission agrees that the Intervenors presented evidence which could potentially support a different outcome in this case. However, the Commission is charged with the responsibility of balancing competing positions and making an informed decision. In this case, the Commission believes that the evidence supports the approval of the Area Plus Plan as filed.

IT IS THEREFORE ORDERED THAT:

1. The Petitions for Rehearing and/or Reconsideration filed by LDDS, MCI, AT&T, and the Consumer Advocate are hereby denied.

2. The Request for Clarification made by the Staff is hereby granted.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Henry D. Jones
Chairman

ATTEST:

Executive Director

(SEAL)